REMARKS/ARGUMENTS

Initially, we would like to thank each of Lien Tran and Rina Dye, who is acting as the Supervising Examiner in the absence of Milton Cano, for the courtesies extended during the telephone conversations on August 21, 2008 and September 2, 2008 respectively. During each conversation, the Applicant's representative discussed the current rejection of claims 1-3, 5-21, 23-26, 33-34, 35-39, 41 and 48 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,899,907 to Gonzalez et al. and the applicability of the July 5, 2007 § 1.132 Affidavit. More specifically, Ex. Tran could not provide an answer to the applicability of the prior Affidavit but instead referred the Applicant's representative to Ex. Dye. Examiner Dye indicated that she would provide Examiner Tran with guidance regarding the application of the § 1.132 Affidavit. An interview Summary form received from Ex. Tran indicates that the previously filed Affidavit is not effective because of a difference in inventorship between WO 02/21936 and U.S. Patent No. 6,899,907. It is respectfully submitted that this position is clearly in error as the inventorship in the two patent documents list the same five inventors and covers the same disclosure.

To reiterate and further detail the Applicant's position, the Applicant respectfully submits that the July 5, 2007 § 1.132 Affidavit effectively removes the '907 patent as a § 102(e) reference. The following are important dates at issue:

I) Present Application No. 10/005,052
Filed December 4, 2001

II) International Publication No. WO 02/21936
Filed September 17, 2001
Priority Date September 18, 2000 based on U.S. Patent Application No. 09/663,914

III) U.S. Patent Application No. 09/663,914

Filed September 18, 2000

Issued May 31, 2005 as U.S. Patent No. 6,899,907 (Gonzalez patent relied upon)

Initially, the Examiner rejected claims 1-3, 5-21, 23-26, 33-34, 35-39, 41 and 48 under 35 U.S.C. § 102(e) as being anticipated by International Publication No. WO 02/21936 to Gonzalez et al. A § 1.132 Affidavit was filed by the Applicant on July 5, 2007 to remove the '936 publication as prior art. After filing an Appeal Brief on February 28, 2008, the Examiner determined that the § 1.132 Affidavit was effective in removing the '936 publication as the prior art. See M.P.E.P. § 2136.05 stating that:

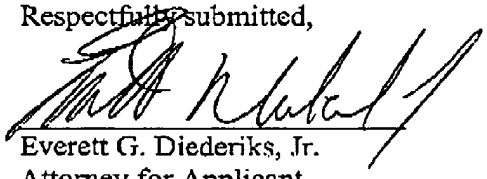
> When a prior U.S. patent, ** U.S. patent application publication>,< or international application publication* is not a statutory bar, a 35 U.S.C. § 102(e) rejection can be overcome by antedating the filing date (see MPEP § 2136.03 regarding critical reference date of 35 U.S.C. § 102(e) prior art) of the reference by submitting an affidavit or declaration under 37 CFR § 1.131 **or by submitting an affidavit or declaration under 37 CFR § 1.132 establishing that the relevant disclosure is applicant's own work.** *In re Mathews*, 408 F.2d 1393, 161 USPQ 276 (CCPA 1969). The filing date can also be antedated by applicant's earlier foreign priority application or provisional application if 35 U.S.C. § 119 is met and the foreign application or provisional application "supports" (conforms to 35 U.S.C. § 112, first paragraph, requirements) all the claims of the U.S. application. *In re Gosteli*, 872 F.2d 1008, 10 USPQ2d 1614 (Fed. Cir. 1989) (emphasis added).

Therefore, the Applicant has already sworn behind WO 02/21936 **and** its priority application subject matter from 09/663,914. The Examiner is now rejecting the same claims previously rejected under the '936 WO publication based on the U.S. patent that issued from the same priority document. The July 5, 2007 Affidavit already establishes that the relevant disclosure is the Applicant's own work. That is, in applying U.S. Patent No. 6,899,907, the Examiner is only relying upon prior disclosure in 09/663,914 which has already been sworn behind. Therefore, the pending § 102(e) rejection should be withdrawn. Again, the reason conveyed by Ex. Tran in the interview summary record for why the prior Affidavit is not acceptable, i.e., the inventorship is distinct, is incorrect as evidenced by comparing the front face of WO 02/21936 and U.S. Patent No. 6,899,907.

With respect to the remaining rejection of claims 1-3, 5-9 and 16-48 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,844,924 to Stanley in view of U.S. Patent No. 4,372,812 to Phillips et al., the Applicant refers to the arguments made in the Appeal Brief filed February 28, 2008. In summary, the combination applied by the Examiner does not employ the same mild ozone oxidation treatment, makes no mention of 0.1 to 1 parts ozone per 100 parts bran, makes no mention of reducing ferulic acid (let alone to less than 30 ppm) and has no disclosure on increasing the concentration of vanillin. Unless the Examiner can find some disclosure in the applied prior art to these specifically claimed inventive features, the rejections should be withdrawn.

Based on the above remarks, the Applicant respectfully submits that the present invention is patentably defined over the prior art of record such that allowance of all claims and passage of the application to issue are respectfully requested. If the Examiner should have any additional questions or concerns regarding this matter, she is cordially invited to contact the undersigned at the number provided below in order to further prosecution.

Respectfully submitted,



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